IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 24374 of 2007(B)

PETITIONER:

SRI.C.L.THOMAS, AGED 57,
S/O.CHEMUNDA LONAPPAN, CHEMUNDA HOUSE,
CHIYYARAM VILLAGE, THRISSUR.

BY ADV. SRI.THIYYANNOOR RAMAKRISHNAN
SRI.ARUN KUMAR.P

RESPONDENTS:

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1. THE SECRETARY,
CORPORATION OF THRISSUR,
THRISSUR.

2. REVENUE OFFICER,
TAX, FINANCE & AUDIT COMMITTEE,
CORPORATION OF THRISSUR,
THRISSUR.

3. C.D.THOMAS, S/O.CHEMUNDA LONAPPAN,
GOSAYIKUNNU WEST, CHIYYARAM VILLAGE,
THRISSUR.

R1 BY ADV. SRI.K.B.MOHANDAS,SC,THRISSUR CORPORATIO
SRI.LELLULAL T.G.THUNDATHIL
SRI.K.A.SREEJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C) No.24374 of 2007

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Dated: 30th October, 2007

JUDGMENT

In this Writ Petition the petitioner who is the occupant of shop room No.26 in Sakthan Thampuran Nagar Tarak Market, Thrissur along with his brother, the third respondent seeks to quash Ext.P3 order passed by the 2nd respondent by which the Corporation rejected the joint application submitted by the petitioner and the third respondent for constructing a partition wall inside room No.26 so as to bifurcate that room into two rooms of equal measurements. The petitioner also prays that respondents 1 and 2 be restrained from obstructing the petitioner from constructing the compound wall. The further prayer is that the 2nd respondent be directed to fix the quantum of licence fees payable separately by the petitioner and the third respondent.

2. A very detailed counter affidavit has been filed on behalf of the 1st respondent-Corporation. The Corporation contends inter alia that granting permission to the petitioner and the third respondent to bifurcate the room which is occupied by them as joint tenants will create a very bad precedent. It will cause monetary loss to the Corporation since the Corporation will have to be content with 50%

of the total licence fee which is being collected now in respect of room No.26 from the two tenants. In the event of a situation in future wherein it becomes necessary to rehabilitate the occupants of the room, the Corporation will be bound to rehabilitate not only the petitioner but also the third respondent who will by virtue of the directions sought for will become two separate tenants under the Corporation.

3. It cannot be said that the apprehensions voiced by the Corporation are totally out of place. But I find that under Ext.P1, vide resolution No.25 the Council of the Corporation has decided way back on 21.3.2000 that the room can be bifurcated by constructing partition wall in the middle. The issue was referred to the Tax, Finance and Audit Committee (T. F & A Committee) for the purpose of determination of rent. Of course, the learned Standing Counsel for the Corporation argued very strenously that resolution No.25 was subject to the decision to be taken by the T. F & A Committee. I cannot agree. The issue referred to the T. F & A Committee was only the issue of determining the rent. The Corporation Council having resolved way back in 2000 that bifurcation can be permitted and the petitioner and the third respondent can be allowed to occupy the room by constructing a partition wall in the middle and the technical

authorities having given consent for constructing such a partition wall, the Corporation cannot now after so many years passed Ext.P3 rejecting the application on the various reasons mentioned. It is also seen that similar permissions have been granted to at least a few other tenants. I quash Ext.P3 and direct the Corporation to permit the petitioner and the third respondent to construct a partition wall in the room in question in such a manner as to bifurcate the room into two rooms of equal measurements. It is however made clear that the determination of the licence fee payable by the petitioner and the third respondent will be within the discretion of the Corporation and the Corporation can have due regard to the prevalent rent rate in the locality while determining the rent. It is also made clear that in the event of it becoming necessary for the Corporation to rehabilitate the petitioner and the third respondent, both of them will be treated as one tenant for the purpose of rehabilitation. It is also made clear that this judgment will not be treated as a precedent against the Corporation in any future case.

The Writ Petition is allowed subject to the above observations.

srd **PIUS C.KURIAKOSE, JUDGE**